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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/990,932	11/21/2001	Robert J. Sicurelli JR.	CONTINUATION-11-D1	4222

4988 7590 02/24/2005

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EXAMINER
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WILSON, JOHN J

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 02/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/990,932	SICURELLI ET AL.	
	Examiner	Art Unit	
	John J. Wilson	3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 05 January 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 33-36 and 38-73 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 33-36 and 38-73 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/10/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 64 and 65 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The disclosure, as filed, does not teach a "tapered series of truncated section", and therefore, this limitation is held to be improper new matter.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 34-36, 38, 40-50 and 53-71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reynaud et al (5328372) in view of Albert (5564929). Reynaud shows a post having non-metallic and non-woven fibers 5 in a resin 4. The fibers and resin of Reynaud are inherently flexible to some degree, however, Reynaud shows using carbon fibers not glass. Albert teaches the use of alternative fibers including carbon or glass, column 2, lines 59-65. It

would be obvious to one of ordinary skill in the art to modify Reynaud to include the use of glass fibers as suggested by Albert in order to make use of known alternative materials in order to obtain the desired known properties of those materials. Reynaud teaches matching properties of the tooth. To use the inherently more flexible glass to better match such properties would have been obvious to one of ordinary skill in the art. The specific shape of the post used is an obvious matter of choice in shape to best match the canal. The specific type of glass fibers used is an obvious matter of choice in known materials to one of ordinary skill in the art. The specific type of resin used is an obvious matter of choice in the use of known materials to the skilled artisan.

Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over Reynaud et al (5328372) in view of Albert (5564929) as applied to the claims above, and further in view of Al Kasem (5326264). The above combination does not show using an opaque material. Al Kasem teaches using an opaque filler, column 18, line 19. It would be obvious to one of ordinary skill in the art to modify the above combination to include the use of an opaque material as shown by Al Kasem in order to make use of known materials for best matching the tooth.

Claim 51 is rejected under 35 U.S.C. 103(a) as being unpatentable over Reynaud et al (5328372) in view of Albert (5564929) as applied to the claims above, and further in view of Kennard (3903603). The above combination does not show using a loop. Kennard teaches using a loop shape, column 2, lines 55-57. It would be obvious to one of ordinary skill in the art to modify the above combination to include a loop shape as shown by Kennard in order to make use of art known shapes for better holding within a tooth.

Claim 52 is rejected under 35 U.S.C. 103(a) as being unpatentable over Reynaud et al (5328372) in view of Albert (5564929) as applied to the claims above, and further in view of Weissman (5326263). The above combination does not show an end shaped to direct light. Weissman shows an end shaped to direct light, Fig. 6. It would be obvious to one of ordinary skill in the art to modify the above combination to include a shaped end as shown by Weissman in order to direct light. To shape the end by polishing is an obvious matter of choice in the process used to obtain a known structure to the skilled artisan.

Claims 72 and 73 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reynaud et al (5328372) in view of Albert (5564929) and Al Kasem (5326264) as applied to the claim 39 above, and further in view of Fujisawa et al (4931096). The above combination does not show the use of a radio opaque material. Fujisawa teaches the use of radio opaque material including barium sulfate, column 2, lines 10-16. It would be obvious to one of ordinary skill in the art to modify the above combination to include radio opaque material as shown by Fujisawa in order to enable the material to show up on radiograph.

### ***Response to Arguments***

Applicant's arguments filed January 5, 2005 have been fully considered but they are not persuasive. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection using the Albert (5564929). The parent application

08/126,631, now Patent No. 5,518,399, of the present application, does not disclose the use of glass for the post fibers, and therefore, for this feature, Albert is prior art.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John J. Wilson whose telephone number is 571-272-4722). The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver, can be reached at 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**John J. Wilson**  
**Primary Examiner**  
**Art Unit 3732**

jjw  
February 21, 2005